

REMARKS

The Office Action dated April 2, 2008 has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 1-5, 7-9, 11-20, 22-25, 27-34 have been amended to more particularly point out and distinctly claim the subject matter of the invention. Claim 10 has been canceled without prejudice or disclaimer. No new matter has been added and no new issues are raised which require further consideration or search. Therefore, claims 1-9, 11-20, 22-25, and 27-34 are currently pending in the application and are respectfully submitted for consideration.

The Office Action took the position that claims 24 and 30 (i.e. apparatus claims which recite means-plus-function limitations) do not invoke 35 U.S.C. § 112, sixth paragraph because each “means” phrase is preceded by a sufficient act for achieving the specific function. (see Office Action at pages 3-4, “Response to Amendment” section). Applicants respectfully submit that the Office Action’s decision not to invoke 35 U.S.C. § 112, sixth paragraph is contrary to law.

The Federal Circuit has held that in determining whether to apply 35 U.S.C. § 112, sixth paragraph, the use of the word “means” triggers a presumption that the inventor used this term advisedly to invoke 35 U.S.C. § 112, sixth paragraph. Furthermore, the Federal Circuit has held that the presumption that 35 U.S.C. § 112, sixth paragraph applies, is only overcome if the claim itself recites sufficient structure or material for

performing the claimed function. (see *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1574, 40 USPQ2d 1619, 1623 (Fed. Cir. 1996); *Cole v. Kimberly-Clark Corp.*, 102 F.3d 524, 531, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996), *cert denied*, 522 U.S. 812 (1997)). Applicants respectfully submit (and the Office Action appears to concede) that claim 24 and claim 30 use the word “means” at least once in the claim, and thus, the presumption that 35 U.S.C. § 112, sixth paragraph is invoked applies unless the Examiner can show that the claim itself recites sufficient structure or material for performing the claimed function.

Treating the phrase “obtaining means for obtaining,” as recited in claim 24, as a representative sample of the means-plus-function limitations, the Office Action attempted to establish that the presumption does not apply by alleging that the phrase “means for” is preceded by a sufficient act, i.e. “obtaining” for achieving the specific function. (see Office Action at page 4). As a threshold matter, it is questionable whether an “act” can ever overcome the presumption imposed by the phrase “means for,” as an “act” is generally associated with a step-plus-function, while a “structure” or “material” is generally associated with a means-plus-function under 35 U.S.C. § 112.

Nevertheless, Applicants respectfully submit that the case law makes it clear that the use of the phrase “obtaining,” (and other phrases that precede the “means for” phrase in claims 24 and 30) does not provide sufficient structure in the claim to overcome the presumption that 35 U.S.C. § 112 applies.

For example, in *Unidynamics Corp. v. Automatic Products International Ltd.*, the Federal Circuit held that the claim element “spring means tending to keep the door closed” invoked 35 U.S.C. § 112, sixth paragraph, notwithstanding the use of the word “spring” preceding the word “means.” (see *Unidyamnics Corp. v. Automatic Products International Ltd.*, 157 F.3d 1311, 48 USPQ2d 1099, 1101, 1104 (Fed. Cir. 1998). According to the Federal Circuit:

We disagree with the district court, however, that the recitation of “spring” which is structural language, takes the limitation out of the ambit of the construction dictate of § 112, ¶ 6 ... The recitation of the word “spring” does not vitiate the patentee’s choice. (*Unidyamnics*, 147 F.3d at 1311, 48 USPQ2d at 1104).

Similarly, in *Nagle Industries, Inc. v. Ford Motor Co.*, the Federal Circuit held that the claim element of “slack adjustment means” was also a means-plus-function element interpreted under Section 112, sixth paragraph:

The claim phrase “slack adjustment means” is defined by the functional language “for adjusting slack in said strand means.” The only structural recitation of attaching the slack adjustment means to the end of the strand means involves the placement of the slack adjustment means within the claimed cable assembly. This recitation of structure does not specify what the slack adjustment means is structurally. ... Therefore, the claim does not recite “sufficient structure to perform entirely the claimed function.” ... We agree with the district court that the claim limitation “slack adjusting means” is written in means-plus-function language because it recites a means for performing a specified function without the recital of specific structure to carry out that function. (*Nagle Industries, Inc. v. Ford Motor Co.*, Civ. App. 97-1449 (Fed. Cir. June 22, 1999) (unpublished)).

In light of the case law, and in light of the fact that the Office Action has failed to identify sufficient structure in claim 24 and 30 to perform the recited functions (such as

“obtaining attributes relating to at least two devices within a cluster from a single-point”), Applicants respectfully request that the Examiner indicate in writing that claims 24 and 30 do invoke 35 U.S.C. § 112, sixth paragraph, and that the Examiner is treating claims 24 and 30 as such.

The Office Action rejected claims 18-20 and 22-23 under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Specifically, the Office Action alleged that Applicants’ specification discloses a computer readable medium as embodying “communication media” including “wired media such as a wired network or direct-wired connection, and wireless media such as acoustic, RF, infrared, and other wireless media,” which the Office Action alleged is non-statutory subject matter under 35 U.S.C. § 101. (see Office Action at page 4, “Claim Rejections – 35 USC § 101” section). Applicants respectfully submit that claims 18-20 and 22-23 have been amended to recite “computer readable storage medium.” Applicants respectfully request that this rejection be withdrawn.

The Office Action rejected claims 1-15, 17, 18, 20, 22-24, and 27-34 under 35 U.S.C. §103(a) as being allegedly unpatentable as obvious over Bruck, et al. (U.S. Patent No. 6,691,165) (“Bruck”) in view of Syvanne (U.S. Patent Publication No. 2002/0157018) (“Syvanne”). The Office Action took the position that Bruck discloses all the elements of the claims with the exception of “determining if the NM operations on the cluster, including said at least two devices, were applied correctly, and if not, rolling back to a successful configuration,” with respect to claim 1, “using the SSL protocol to

distribute the state sharing information messages throughout the cluster network,” with respect to claim 8, and similar limitations with respect to the other claims. The Office Action then cited Syvanne as allegedly curing some of the deficiencies of Bruck, with respect to claim 1, and took official notice of the limitation of claim 8. (see Office Action at pages 6 and 8).

Claim 10 has been cancelled, and thus, the rejection with respect to claim 10 is moot. With respect to the remaining claims, the rejection is respectfully traversed for at least the following reasons.

Claim 1, upon which claims 2-8 and 27 are dependent, recites a system, which includes a network interface configured to communicate with nodes in a cluster, and a memory configured to store information relating to cluster management. The system further includes a configuration subsystem operationally coupled to a remote management broker. The remote management broker is configured to distribute information between the nodes in the cluster. The system further includes a processor configured to access the cluster from a single-point, and obtain information relating to at least two devices within the cluster. The processor is further configured to present the information to a user, and determine network management operations to perform to the cluster. The processor is further configured to perform the determined network management operations, and determine whether the network management operations on the cluster, including said at least two devices, were applied correctly, and when the

network management operations were not applied correctly, roll back to a successful configuration.

Claim 9, upon which claims 11-17 and 28 are dependent, recites a method, which includes accessing a cluster from a single-point, and obtaining attributes relating to at least two devices within the cluster. The method further includes receiving input from a user relating to the attributes, and determining network management operations to perform on the cluster based on the received input. The method further includes performing the determined network management operations on the cluster, and determining whether the network management operations on the cluster, including said at least two devices, were applied correctly, and when the network management operations were not applied correctly, rolling back to a successful configuration.

Claim 18, upon which claims 20, 22-23, and 29 are dependent, recites a computer program embodied on a computer readable storage medium, said computer program configured to control a processor to perform a method. The method includes obtaining attributes relating to at least two devices within a cluster from a single-point, and receiving input relating to the attributes. The method further includes determining network management operations to perform on the cluster based on the received input, and distributing the network management operations to the devices within the cluster. The method further includes applying the network management operations, and determining whether the network management operations on the cluster, including said at

least two devices, were applied correctly, and when the network management operations were not applied correctly, rolling back to a successful configuration.

Claim 24, upon which claim 25 is dependent, recites an apparatus, which includes obtaining means for obtaining attributes relating to at least two devices within a cluster from a single-point, and receiving means for receiving input relating to the attributes. The apparatus further includes determining means for determining network management operations to perform on the cluster based on the received input, and distributing means for distributing the network management operations to the devices within the cluster. The apparatus further includes applying means for applying the network management operations to the devices within the cluster, and determining means for determining whether the network management operations on the cluster, including said at least two devices, were applied correctly, and when the network management operations on the cluster were not applied correctly, rolling back to a successful configuration.

Claim 30 recites a system, which includes network interface communicating means for communicating with nodes in a cluster, and storing means for storing information relating to cluster management. The system further includes distributing means for distributing information between the nodes in the cluster, and accessing means for accessing the cluster from a single-point. The system further includes obtaining means for obtaining information relating to at least two devices within the cluster, and presenting means for presenting the information to a user. The system further includes operation determining means for determining network management operations to perform

to the cluster, and performing means for performing the determined network management operations. The system further includes correction determining means for determining whether the network management operations on the cluster, including said at least two devices, were applied correctly, and when the network management operations were not applied correctly, rolling back to a successful configuration.

Claim 31, upon which claims 32-34 are dependent, recites an apparatus, which includes a network interface configured to communicate with nodes in a cluster, and a memory configured to store information relating to cluster management. The apparatus further includes a processor configured to access the cluster from a single-point, and obtain information relating to at least two devices within the cluster. The processor is further configured to present the information to a user, and determine network management operations to perform to the cluster. The processor is further configured to perform the determined network management operations, and determine whether the network management operations on the cluster, including said at least two devices, were applied correctly, and when the network management operations were not applied correctly, roll back to a successful configuration.

As will be discussed below, the combination of Bruck and Syvanne fails to disclose or suggest all of the elements of the claims, and therefore fails to provide the features discussed above.

Bruck generally discloses a scalable, distributed, load balancing server system having multiple machines that function as a front server layer between a network, and a

back-end server layer having multiple machines functioning as Web file servers, FTP servers, or other application servers. The front layer machines comprise a server cluster that performs fail-over and dynamic load balancing for both server layers. The operation of the servers on both layers is monitored, and when a server failure to either layer is detected, the system automatically shifts network traffic from the failed machine to one or more operational machines, reconfiguring front-layer servers as needed without interrupting operation of the server system. (see Bruck at Abstract).

Syvanne generally discloses a method, network device, and management system, where a configuration of a firewall is changed over a network connection by a remote management system. The firewall applies the change configuration after receiving a command from the management system. Shortly after the changed configuration is applied, the management system takes a new connection to the firewall. With this new connection, the configuration is accepted for permanent use in the firewall. If a new connection is not successfully set up within a given time limit, the firewall will automatically return to use the old configuration. (see Syvanne at Abstract).

Applicants respectfully submit that Bruck and Syvanne, whether considered individually or in combination, fail to disclose, teach, or suggest, all of the elements of the present claims. For example, the combination of Bruck and Syvanne fails to disclose, teach, or suggest, at least, “a processor configured to ... apply a configuration lock that is intended to prevent other applications from performing network management operations

on the at least two devices within the cluster,” as recited in independent claim 1, and similarly recited in independent claims 9, 18, 24, 30, and 31.

The Office Action takes the position that the cited passage of Bruck at col. 23, lines 1-19 disclose applying a configuration lock that is intended to prevent other applications from performing network management operations on the at least two devices within the cluster. (see Office Action at page 8, last three lines). However, Bruck merely discloses a password feature which can be used by the GUI to authenticate a user who wishes to gain access to the distributed server cluster software and to information from the Remote Monitoring Console. (see Bruck at col. 23, lines 1-18). There is no disclosure, or suggestion, of applying a configuration lock that prevents other applications from performing network management operations on at least two devices within the cluster.

Furthermore, Syvanne does not cure the deficiencies of Bruck. As discussed above, a configuration of a firewall is changed over a network connection by a remote management system. After the changed configuration is applied, the management system establishes a new connection to the firewall. If a new connection is not successfully set up within a given time limit, the firewall will automatically return to use the old configuration. (see Syvanne at Abstract). There is absolutely no disclosure, or suggestion, in Syvanne, of applying a configuration lock that prevents other applications from performing network management operations on at least two devices within the cluster.

Therefore, for at least the reasons discussed above, the combination of Bruck and Syvanne fails to disclose, teach, or suggest, all of the elements of independent claims 1, 9, 18, 24, 30, and 31. For the reasons stated above, Applicants respectfully request that this rejection be withdrawn.

Claims 2-8 and 27 depend upon claim 1. Claims 11-15, 17, and 28 depend upon claim 9. Claim 20, 22-23, and 29 depend upon claim 18. Claims 32-34 depend upon claim 31. Thus, Applicants respectfully submit that claims 2-8, 11-15, 17, 20, 22-23, 28-29, and 32-34 should be allowed for at least their dependence upon claims 1, 9, 18, and 31, and for the specific elements recited therein.

The Office Action rejected claims 16, 19, and 25 under 35 U.S.C. §103(a) as being allegedly unpatentable as obvious over Bruck in view of Syvanne, and further in view of Chapman, et al. (U.S. Patent No. 5,774,650) (“Chapman”). The Office Action took the position that the combination of Bruck and Syvanne discloses all the elements of the claims with the exception of “applying a configuration lock that is intended to prevent other applications from performing network management operations on the devices within the cluster during a predetermined time, and releasing the configuration lock after the network management operations are performed.” The Office Action then cited Chapman as allegedly curing the deficiencies of Bruck and Syvanne. (see Office Action at page 9). The rejection is respectfully traversed for at least the following reasons.

The descriptions of Bruck and Syvanne, as discussed above, are incorporated herein. Chapman generally disclose a method and data processing system for controlling

the access of a plurality of users to a computer system connectable over a network to a plurality of computers. The data processing system has facilities for restricting user access to the data processing system which includes a user authentication procedure in which at logon a user's identity is compared with a list of authorized users.

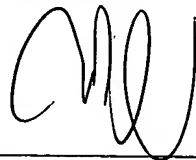
Claims 16, 19, and 25 depend upon independent claims 9, 18, and 24, respectively. As discussed above, the combination of Bruck and Syvanne does not disclose, teach, or suggest all of the elements of independent claims 9, 18, and 24. Furthermore, Chapman does not cure the deficiencies in Bruck and Syvanne, as Chapman also does not disclose, teach, or suggest, at least, "applying a configuration lock that is intended to prevent other applications from performing network management operations on the at least two devices within the cluster," as recited in claim 9, and similarly recited in claims 18 and 24. Thus, the combination of Bruck, Syvanne, and Chapman does not disclose, teach, or suggest all of the elements of claims 16, 19, and 25. Additionally, claims 16, 19, and 25 should be allowed for at least their dependence upon independent claims 9, 18, and 24, and for the specific elements recited therein.

For at least the reasons discussed above, Applicants respectfully submit that the cited prior art references fails to disclose or suggest all of the elements of the claimed invention. These distinctions are more than sufficient to render the claimed invention unanticipated and unobvious. It is therefore respectfully requested that all of claims 1-9, 11-20, 22-25, and 27-34 be allowed, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicants' undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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